



OFFICE OF THE DISTRICT ATTORNEY
TWENTIETH JUDICIAL DISTRICT

Michael T. Dougherty, District Attorney

December 23, 2019

Re: Investigation of the shooting of Jose Gallegos (DOB: 9/15/81) on November 1, 2019, involving Colorado University Police Department Sergeant Matthew DeLaria, in the area of the RTD parking garage located at 5170 Table Mesa Drive, Boulder, Colorado

Dear Chief Jokerst:

The investigation and legal analysis of the shooting of Jose Luis Gallegos by Colorado University Police Department Sergeant Matthew DeLaria has been completed.

The Critical Incident Team for the 20th Judicial District investigated this case. The multi-agency team was formed to investigate incidents in which any law enforcement officer within the 20th Judicial District uses physical or deadly force against a person while acting under the color of official law enforcement duties. As in every case, the investigation was conducted for the sole purpose of determining whether criminal charges are warranted. The investigation and review of this incident does not evaluate nor review the appropriateness of police tactics, or whether policies and procedures were followed.

The Critical Incident Team completed a thorough investigation into this incident and generated detailed reports and documentation. The file is voluminous and includes recorded witness interviews, numerous reports, diagrams, and media files. These media files contain recorded interviews, police communications, photographs, and video recordings related to the incident.

A review of the reports and documentation submitted to my office has been completed and I, along with members of my staff, have been fully briefed regarding this incident by the Commanders in charge of the investigation. I conclude that, under the applicable Colorado law, no criminal charges can or should be filed against Sergeant Matthew DeLaria. My decision, based on criminal law standards, does not limit administrative action by the Colorado University Police Department or any civil actions where less stringent laws, rules, and level of proof would apply.

My findings, analysis, and conclusions of law with respect to Sergeant Matthew DeLaria's use of force in this incident are as follows:

SUMMARY OF DECISION

Applying the applicable statutes and case law to the facts presented through this investigation, I find that Sergeant DeLaria is not subject to criminal prosecution for his actions. In all cases, the District Attorney's Office criminal filing standard requires that there be a reasonable likelihood of conviction in order to bring criminal charges against an individual. The evidence establishes that, at the time Sergeant DeLaria discharged his firearm at Jose Gallegos, it was reasonable for him to believe that Jose Gallegos possessed a handgun and posed a serious risk to use deadly force against police officers or his own children.

Additionally, the evidence shows that it was reasonable for Sergeant DeLaria to believe that Jose Gallegos had committed a felony offense involving a deadly weapon, namely, murder, and that officers on scene had to effect his arrest before letting him regain access to his vehicle.

At the time Sergeant DeLaria fired the shot in his capacity as a SWAT sniper, police had reason to believe that the subject had murdered his wife by shooting her in the head. When the police located the subject, they found he had driven himself and the children up to the rooftop railing of the RTD Park-N-Ride. As police attempted to convince the subject to surrender peacefully, the subject admitted to killing the victim and stated repeatedly that he was armed with a handgun. The subject defied numerous police commands, made suicidal statements, and refused to take his hands out of his pockets. Ultimately, he ran back towards the car where the children had been observed.

The evidence establishes that when Jose Gallegos disobeyed police commands to surrender and instead ran towards his vehicle occupied by his children, Sergeant DeLaria reasonably believed that Jose Gallegos was likely to endanger the lives of those children inside the vehicle and police officers if he was not immediately apprehended.

For these reasons, Sergeant DeLaria was legally justified under Colorado law in using physical force by firing a single shot from his sniper rifle at Jose Gallegos, pursuant to C.R.S. sections 18-1-704 and 18-1-707. Therefore, the District Attorney's Office would not be able to prove beyond a reasonable doubt that the use of force by Sergeant Matthew DeLaria was unjustified.

Although Mr. Gallegos was struck by a bullet, the wound was non-fatal. Mr. Gallegos then jumped from the 4th floor of the Park-N-Ride structure and died from injuries caused by the fall. Mr. Gallegos' decision to jump to his death was consistent with suicidal statements that he made to his son and to law enforcement, prior to the shot being fired. Based on the totality of the evidence in the case, Sergeant DeLaria did not cause the death of Jose Gallegos; Jose Gallegos committed suicide.

As required by statute, the analysis contained in this letter focuses on Sergeant DeLaria's discharge of his firearm. However, I want to acknowledge that all evidence indicates Mr. Gallegos brutally killed his wife. Had Mr. Gallegos survived his jump from the parking garage, my office would have prosecuted him for the domestic violence murder he committed. The

murder of the victim must not be forgotten, even though Mr. Gallegos' decision to take his own life negates the ability to prosecute him.

DETAILED STATEMENT OF FACTS

On November 1, 2019, family and friends had been unable to reach Martha Sianez-Hernandez for multiple days and were concerned.

At 1:33 p.m. the Boulder Police Department received a phone call from Martha Sianez-Hernandez's sister requesting a welfare check at 3267 30th Street, #4, Boulder. She explained her sister was having trouble with her husband and she had not been able to contact her sister for a week. The sister also advised there were two children in the home. At 1:40 p.m., two officers were dispatched to 3267 30th St. When they arrived, they made contact at the front door with Jose Gallegos, the husband of Ms. Sianez-Hernandez. Jose Gallegos told the officers his wife was sick in bed but he would have her call her sister. Officers could see two children in the home and there was no indication they were in danger. After speaking with Gallegos, the officers left the residence. These statements by Gallegos were later learned to have been false.

Later in the day Martha's friend, Joel Renteria, attempted to see her at the home but Jose Gallegos answered the door and told him she was sick and he could not see her. When Renteria later saw Jose Gallegos leave the home, he contacted police who then responded for another welfare check. After entering the home, officers observed that Martha Sianez-Hernandez was deceased in a bedroom. Emergency medical personnel with AMR responded and confirmed that Martha Sianez-Hernandez was, in fact, deceased. AMR did not initially move her body as a homicide investigation was in progress. However, from what the medic on scene could see, he initially believed and reported that the fatal injury was a gunshot wound to the head. This information was conveyed to the police officers by commanding officers on scene, through phone conversations, and over the radio.

At 4:51 p.m. a BOLO was aired over area police radio channels for the suspect (Jose Gallegos) and the vehicle he was driving: a 2014 Jeep Grand Cherokee, gold, Colorado license YOM-177. The BOLO was updated indicating the suspect was in possession of a handgun and had two children ages 6 and 12 with him.

To locate and apprehend suspect Jose Gallegos for his suspected involvement in the homicide, officers obtained location information for his cellular phone. The "ping" results ultimately indicated the suspect's cellular phone was in the area of the RTD parking structure, 5170 Table Mesa Drive, Boulder, CO. Since it was a homicide and the children were missing, members of the Boulder Police Department moved quickly to locate the vehicle. At 5:14 p.m., the suspect's vehicle was located on the 4th level of the RTD parking structure. Officers converged on the area, located Jose Gallegos, and began negotiations with him as he was standing outside his vehicle.

SWAT was called to assist. SWAT officers were aware Gallegos was the suspect in a homicide. It was reported through in person briefings and over radio that his children were believed to be inside the vehicle. Sergeant Vinnie Gallerani ordered SWAT officers to not allow the suspect to get back inside his vehicle because of the safety concerns for the children and the

officers. While on the rooftop, officers saw movement inside of his vehicle which they believed could be the suspect's children. Officers on the ground level came into contact with Jose Gallegos' 18-year-old son, who had been in the vehicle earlier but had been dropped off. He confirmed to police that the two younger children were still in the vehicle.

After being briefed on the situation, Sergeant DeLaria was deployed as a SWAT sniper to the 5th floor of the RTD parking garage, approximately 60 feet to the southwest of Jose Gallegos at an elevated position with his rifle propped up on the short concrete barrier. Officers in Sergeant DeLaria's team included Officer Erin Starks, Officer Dillon Garrettson, and Sergeant Joel Burick. A second team of officers was on the 4th level to the north of Sergeant DeLaria and engaged in negotiations, and a third team would come up the ramp to the 4th level southeast of Sergeant DeLaria's position just before the shot was fired.

Throughout negotiations for a safe surrender, which lasted approximately 20 minutes, Jose Gallegos disregarded commands to take his hands out of his pockets. He repeatedly stated that he had a gun. He did not comply with orders to turn himself in or to get down on the ground. Jose Gallegos made further statements indicating guilt for the suspected murder, calling himself a monster, stating that his wife had been dead for four days, stating he'd killed the mother of his children, and asserting that he was going to jail or prison. He also confirmed that his children were in the vehicle and were safe. He told officers to just shoot him, stated that he was dead already, and stated if police did not shoot him he would jump.

During these negotiations, at approximately 6:13 p.m., Jose Gallegos suddenly ran from the back of his vehicle toward the front of his vehicle, and toward the 43" high wall and railing of the parking structure. SWAT sniper Sergeant Matthew DeLaria fired a single round at Jose Gallegos from his Accuracy International .308 caliber sniper rifle, fearing Gallegos was going to enter his vehicle and harm the children or officers. As the shot was fired, Jose Gallegos continued in motion and went over the railing where he fell to the ground level.

Following the fall, officers immediately responded to Jose Gallegos' vehicle and removed his 12-year-old and his 6-year-old sons. They were unharmed. No firearm was located on scene. Jose Gallegos was taken to the hospital and soon died.

At autopsy, it was determined that Jose Gallegos had died of blunt force trauma injuries from the roughly 45 foot fall off the 4th story rooftop onto pavement, and the superficial gunshot wound to his left thigh was not a contributing factor to his death. The Coroner's Office concluded that the manner of death was suicide.

Sergeant DeLaria Interview:

On November 4, 2019, Sergeant Matthew DeLaria participated in an interview concerning the events of November 1, 2019. He described the events as summarized below.

Sergeant DeLaria was on duty in an office on campus when he heard the BOLO for Gallegos and his Jeep. Soon after, he received a call from SWAT Commander Greg LeFebvre informing him there was a homicide suspect who had shot his wife and was now at the Table Mesa Park-N-Ride. In his current capacity as SWAT sniper team leader, Sgt. DeLaria was ordered to respond. At Boulder Police Department, SWAT operator Officer Mike Marquez

informed him that the homicide suspect was on the 5th floor, they were trying to locate the kids, and there had been some possible movement of a person inside the suspect's vehicle. Sgt. DeLaria then responded with SWAT to the RTD Park-N-Ride.

Upon arrival Sgt. Gallerani, assistant commander on the SWAT team, ordered Sgt. DeLaria to prepare to deploy as a sniper. At this time, Sgt. Gallerani informed Sgt. DeLaria that it sounded like there is an "armed homicide suspect on the ... 5th floor of this parking structure," and he needed a sniper up there with eyes on.

As Sgt. DeLaria prepared his rifle and gear along with fellow sniper Officer Starks, he received additional information and orders from Sgt. Gallerani that "[w]e've got the vehicle. Looks like ... the suspect is outside of the vehicle, talking to our officers.... We believe that his children are in the, could possibly be in that vehicle, and we need... he's not allowed to get back in the vehicle, the suspect is not allowed to get back in the vehicle." Sgt. DeLaria explained that it was his understanding at the time that his role was to take action if necessary to avoid a hostage situation, and to prevent the suspect from hurting his children because there was reportedly a firearm involved. Sgt. DeLaria further explained that for these reasons "take action" specifically meant if the suspect made a break for the car he should shoot him.

Sgt. DeLaria deployed to the rooftop with the SWAT sniper team that included Officer Starks, Officer Garretson, and Sgt. Burick. Sgt. DeLaria recalled hearing on the radio that there was movement in the Jeep Cherokee. He described taking position on the 5th level and seeing the suspect standing out by his vehicle a level down below the sniper team's position (this would be consistent with Jose Gallegos standing on the 4th level rooftop which is also open to the sky, as shown in the photographs and diagram below). Sgt. DeLaria reaffirmed with Officer Starks and Sgt. Burick that if necessary they were to stop the suspect from getting back into the vehicle.

Sgt. DeLaria described confirming he was observing the correct vehicle and the suspect, described the suspect's clothing, and described that as he held him in his rifle scope sight picture the suspect kept one of his hands in his pocket. He recalled the suspect standing 1-3 feet from the rear of the Jeep on the driver's side. Based on the totality of the evidence, his memory was incorrect as to which side of the vehicle the suspect was on, as numerous other witnesses saw the suspect go to the passenger side of the vehicle. He also recalled the Jeep as blue in color, however, the Jeep was gold in color. He described the vehicle as pulled up to the railing of the rooftop with the front of the vehicle facing the railing, consistent with how it was found when the scene was processed.

Sgt. DeLaria reported hearing the negotiations, though not the specifics of what was said. He did recall that "[a]t one point I do hear him talking about killing somebody's mother." Sgt. DeLaria stated numerous times throughout his interview that his concerns at this time were that he believed at least one of the children was in the vehicle, he believed the suspect was armed and knew he was wanted for homicide, and that he was concerned about a potential hostage situation with a child in the vehicle.

Sgt. DeLaria then described that the suspect made a sudden movement, "reaches his hand, both his hands quickly into the, like, waist and front pocket of what he's wearing and then turns and runs towards the Jeep, the driver's side, his vehicle." He further explained that "[a]t this point, I believe he's already got, looking, was grabbing the keys to try to get into the vehicle,

grab his gun, or both.... at this point I realize he's either ... going to try to take the children in the vehicle hostage by getting into the vehicle to shoot into the vehicle to kill the kids ... or he's going to turn the gun and start shooting at us...."

Sgt DeLaria explained in the context when he fired a shot: "I lose sight of him momentarily... When he reappears at the vehicle, um, all these things are going through my head, I locate... I take one shot center of mass." Sgt. DeLaria explained that he lost sight of the suspect from the middle of the car and then re-acquired sight when he was at the front of the vehicle. Sgt. DeLaria was unsure if he had hit him with the shot, and recalled seeing "just this kind of weird... pause and then watching ... watching him fall." When asked if the suspect stopped as the shot was fired or was in one continuous motion to the wall and over the edge, he clarified the suspect was still in a continuous motion.

Sgt. Delaria confirmed that at the time he fired the shot he could not see the suspect's hands, believed him to be armed based on the information he had received, and he was "concerned about him getting into the car to either take the kids hostage, harm the kids, shoot them ... shoot us ... shoot the kids, then shoot himself."

Sgt. DeLaria left his rifle and gear at the location from which he fired the shot and it was later inspected by investigators, confirming that a single shot had been fired from his Accuracy International .308 caliber sniper rifle. Before leaving the scene, Sgt. Delaria recalled a police officer walking away with one of the children in their arms.

Law Radio Information:

Much of the information known to SWAT officers at the time the shot was fired was conveyed by commanding officers and aired over the radio as police initiated the homicide investigation and attempted to locate Jose Gallegos. Records captured much of the information that SWAT officers discussed at the time they responded to the rooftop of the RTD parking garage. A summary of several pertinent calls noted in the CAD notes is as follows:

13:40 - BPD Initial Welfare Check Call to 3267 30th Street, Unit 4
15:20 - BPD Officers are Dispatched to a Second Welfare Check Call
15:52 - BPD Officers Arrive at 3267 30th Street
16:49 - BPD Officers Attempt Entry After Receiving No Response From Occupant(s)
16:51 - Possible Code Black is Aired, Medical is Requested
16:52 - A BOLO is Aired for Jose GALLEGOS and a Gold-Colored 2014 Jeep Cherokee (YOM-177)
16:55 - Information is Aired that GALLEGOS is "In Custody" of his Two Children
17:03 - A "Ping" for GALLEGOS Cell Number 720-335-8544 is Noted
17:04 - BOLO is Updated with Information "Code Zero With Handgun"
17:09 - GALLEGOS Cell Phone "Pings" Near Colorado Avenue & Foothills Parkway
17:13 - Vehicle Description, Handgun Warning and Custody of Two Children Advisements are Re-Broadcast
17:13 - Gold Jeep Reported Southbound on Foothills Parkway from Baseline Road
17:14 - BCSO Unit 594 Observes the Suspect Vehicle at the RTD Park-n-Ride at 5170 Table Mesa Drive
17:17 - GALLEGOS Physical Description Aired

17:24 – Suspect Elder Son (18 YoA) Reportedly On Scene
17:50 – Suspect Observed Outside Jeep Cherokee
17:51 – Suspect Reportedly has “Phone or Gun” to His Head / Moments Later Reported to be a Phone
17:53 – “Weapons Maybe in Pocket” / “Not Sure if Kids in Car”
17:55 – Verbal Negotiations Started
18:02 – BPD Officers in Contact with Elder Son at Scene
18:04 – Son Reports the Younger Children are in the Jeep Cherokee
18:06 – Son Reports that the Suspect is Not Armed, but is Planning “Suicide by Cop” / “Kids are Fine”
18:13:07 – “C1 Still Working on Less Lethal // Poss Child in the Car”
18:13:12 – Sgt. GALLERANI Aired, “129 C1 Still Working on Less Lethal Does Look [Sic] Child in Car Not Letting Him Get Back to Veh”.
18:13:33 - Sgt. GALLERANI Aired, “129 Sniper Shout [Sic] Out”.
18:13:34 – Crisis Team 1, “Sniper Shot Out”

Police Officer Interviews:

The police officers who were on the RTD parking structure rooftop at the time the shot was fired were interviewed by members of the Critical Incident Team. Those interviews confirmed that a single shot was fired just before Jose Gallegos fell from the 4th floor. Several of those witnesses saw Jose Gallegos’ behavior prior to hearing the shot fired and heard some of his statements throughout the negotiations. Some of those witnesses stated that it appeared Jose Gallegos ran and jumped to his death. Interviews with three of the officers on the rooftop who were able to see the pertinent parts of the incident, including Sgt. DeLaria’s perspective from the 5th floor location and Jose Gallegos’ fall, are summarized below.

Officer Erin Starks Interview:

Officer Erin Starks was deployed to the rooftop as a SWAT sniper in the same team as Sgt. DeLaria and was with him at the time the shot was fired.

In his interview, Officer Starks recalled the information he learned from the radio communications and briefings with commanding officers, consistent with the information known to Sgt. DeLaria. Specifically, he confirmed the information that there was a welfare check call followed by a possible Code Black, meaning someone was deceased. He then heard information that the suspect was possibly armed with a handgun, and that the young children were likely with the suspect. Officer Starks described conversations about a potential hostage situation and the decision that they were not to allow the suspect back in the vehicle. Both Officer Garretson and Sgt. DeLaria were present when Sgt. Gallerani gave this order. He understood that he received that order in his capacity as a sniper because the suspect was possibly armed with a handgun and he posed an imminent risk to the children. On his way up to the rooftop, Officer Starks recalled hearing that one of the suspect’s hand was in his pocket and that he had either a cell phone or gun in one of his hands.

On the rooftop, Officer Starks was positioned with Sgt. DeLaria on the 5th floor looking through his scope of his Accuracy International .308 caliber rifle at the suspect. Office Starks recalled hearing another team in verbal contact with the suspect, and the suspect saying things

like he didn't want to live anymore and possibly saying he had killed a woman. The suspect's hands were in the pockets of his hoodie and he was standing to the south of the cars in the driving lane. At some point he received information that there was movement in the vehicle.

Just prior to the shot being fired, Officer Starks recalled that the suspect looked like he had seen officers and was deciding what to do. He then observed the suspect move towards the vehicle and he believed he was getting into the car. Officer Starks recalled going toward the trigger but the suspect had moved too quickly for Officer Starks to fire. At this point, Officer Starks did not feel he had a safe shot with the van in the backdrop. Officer Garretson was to his left and Sgt. DeLaria was to his right. Just before the shot, Officer Starks saw the suspect running between the vehicles, disappearing from view, and then going up over the edge of the railing. He heard the shot but didn't realize it was Sgt. DeLaria who had fired until he heard Sgt. DeLaria say, "shot out."

Officer Starks was specific in his recollection that the suspect climbed up onto the cement wall with the metal tube as he went over the edge. He estimated the wall at 4 – 5 feet tall. Before Officer Starks left he saw the two young children on scene, after they had already been removed from the vehicle.

Officer Dillon Garretson Interview:

Officer Dillon Garretson was also part of the SWAT sniper team with Sgt. DeLaria, and was alongside him at the time the shot was fired.

Officer Garretson recalled that there had been a call for a welfare check, and he later heard in conversation, possibly with Sgt. Burick, that a victim was found laying in bed with a gunshot wound to the head. As he arrived on the rooftop where the suspect had been located, he had information that the children were in the car and he was concerned with making sure they were not taken hostage. He also received information that the suspect may have had a gun to his head, but later learned this was a cell phone. The suspect was within 10 feet off the car with his hand in his pocket.

When he reached his position on the rooftop and observed the suspect, observed the suspect to have both his hands in his pockets. He could hear the suspect talking to the team of officers to the north of him engaged in negotiations, including the suspect saying "I am a monster" and "she's been dead for four days."

As a third team came up the ramp from the south with a canine, he noticed a "look of defeat" on the suspect and then saw him "sprinting towards the car ... super quick." He recalled thinking the suspect was going to try to get into the driver's seat, try to get away, take his family hostage, shoot them and/or shot himself. He saw the suspect on the passenger side of his vehicle and was thinking he needed to shoot before the suspect hurt the kids but didn't feel like he had a safe shot.

Officer Garretson then recalled hearing a single gunshot from behind him to the right, and seeing the suspect pull himself up on the railing and throw himself over the edge. Because Officer Garretson did not see the suspect flinch or go down when the shot was fired, he believed the shot missed.

Officer Garretson was specific in explaining that the suspect ran at full speed and it was not an accident where he fell or lost his footing; he described that the suspect hurled himself over the railing and jumped off.

Officer Garretson concluded his interview by noting that he also would have taken the shot based on the suspect's actions of running toward the car, noting the specific concern that he had killed his wife, was probably armed, and if the suspect got back into the car believed he suspect would hurt the kids or put them in danger.

Officer Ryan Austin Interview:

Officer Ryan Austin came to the rooftop on a different team than Sgt. DeLaria, approaching later from a ramp to the south of the sniper team just prior to the suspect falling from the rooftop. His team was accompanied by a canine unit and was going to attempt to deploy a less lethal round in an effort to resolve the situation with an alternative to lethal force.

Officer Austin reported having much of the same information about the suspect, including the welfare check, the deceased woman, the suspect believed to be armed with a handgun, and the two children believed to be in the vehicle.

Officer Austin explained that his team approached by coming up a ramp. He could see the suspect was in verbal contact with Officer Lolotai, was standing at the back of his Gold Jeep Cherokee where the children were believed to be, he had his right hand in his pocket where Officer Austin assumed he had the gun. As their team came up the ramp, the suspect focused on them.

Officer Austin then saw the suspect turn and run towards the passenger side of the car, and it looked like he was going for the door. At this time, Officer Austin thought he was going to get into the vehicle and harm the kids.

Instead of going for the vehicle the suspect went onto the railing and "jumped off." As the suspect was jumping he heard a shot. Officer Austin repeated later in his interview that after he continued past the vehicle it was "apparent that he was going to jump off."

Officer Austin then assisted in collecting the two children from the vehicle and bringing them to safety. He recalled that the 12-year-old child was in the front seat and appeared shaken up, and the 6-year-old child was sleeping in the back seat. He stated he carried the 6-year-old child to cover.

Additional Officer Interviews:

Several other police officer interviews were included in the investigation and were reviewed prior to the issuance of this letter. Overall, the interviews were consistent on the facts at issue.

Deputy Moody approached with his K-9 partner Duke and the less lethal team to the south. He also observed the suspect run towards the vehicle and then continue on past the vehicle, going over the railing without stopping.

Sergeant Fiegel was positioned with the negotiator and observed similar conduct by the suspect as other officers, but did not see what happened at the moment he went over the edge.

Sgt. Burick confirmed the background information that officers had about the risk posed by Jose Gallegos and the direction not to allow him back to the vehicle, as well as seeing him run towards the vehicle before the shot.

Officer Lolotai's statement was consistent with what is seen and heard on his Body Worn Camera footage, as explained in detail below. He heard many of the things the suspect said during the negotiation including suicidal statements such as "just shoot me or I'll jump over the ledge," threatening statements such as "I have a gun," and admissions to the homicide. He saw the suspect tense up, run towards the passenger side of the vehicle, heard the shot, and saw him stumble and go over the wall. From his direct interactions with the suspect, his concern was that without the police action the children would "have been killed in a murder-suicide scenario."

Officer Prince, who was standing on the ground level at the base of the RTD Park-N-Ride structure, described hearing one gun shot from atop of the parking structure. He looked up and saw the suspect climbing over the railing on the top level of the structure. He then saw the suspect let go from the railing and fall to the ground, landing on his back.

In summary, all officers who were on the rooftop spoke of the same concerns; based on the information they had and their observations, they believed that the suspect had committed a homicide, was armed with a handgun, and the children were in danger if he went to the vehicle.

Additional Witness Statements:

Jose Gallegos' three children who were with him that evening were all interviewed. They did not see the shot fired or how Jose Gallegos came to fall. However, each of them provided some information related to his behavior prior to the stand-off which is pertinent to this investigation. No other civilians were present on the rooftop. Below are summaries of the pertinent information from Jose Gallegos' three sons.

18-year-old A.G. was interviewed at Blue Sky Bridge the evening of November 1, 2019 after the incident occurred. He reported receiving an unexpected call from his father Jose Gallegos around 4:00 p.m. asking to pick him up and see him. Jose Gallegos had his 12-year-old and 6-year-old half-brothers with him in the Jeep Cherokee. They went to McDonalds together. Leaving McDonalds, Jose Gallegos told A.G. this was the last time he would see him. His father told him he wanted to say good-bye for good, said he was sorry, and then drove them all to the RTD Park-N-Ride.

A.G. stated when he saw police and SWAT, he knew it was serious. At the RTD Park-N-Ride Jose Gallegos asked A.G. if he wanted to be dropped off and then let him out. Sometime before A.G. exited the vehicle, Jose Gallegos told him that he was going to jump off the top

floor. Jose Gallegos would not say exactly why, but stated he “did something stupid” and he didn’t “want to be alive anymore.”

A.G. reported trying to talk his father out the idea of jumping from the rooftop. When his father got to the top, they got out so the other children would not hear him talk about killing himself. Ultimately A.G. gave his father a hug, headed downstairs, and continued his conversation with his father over the phone. He asked his father not to jump or get shot in front of the kids.

When contacted by police, A.G. told the officers that the kids were in the vehicle and he was afraid the negotiator wouldn’t work because he believed his father would jump or they’d have to shoot him. On scene, he informed officers he did not believe his father had a gun. In the interview, he stated he was thankful they did not shoot his father because his father had stated to police that he had a gun. A.G. was on the ground level when his father jumped and saw him fall.

12-year-old L.C. old was interviewed at Blue Sky Bridge the night of November 1, 2019. He recalled in the days leading up to November 1, 2019 that his father Jose Gallegos had told him his mother was sick and he could not go into her room to see her. His father told him his mother had bronchitis and was contagious, but he did not hear any coughing. Only his father went into her room and he had not actually seen her for four days, since Monday of that week. The only time he looked in from the doorway he couldn’t see her face because of the blankets.

L.C. recalled driving in the Jeep with his dad and brother, picking up his step-brother, and going to McDonalds. He stated his father was acting strange and cited to a statement his father made that he “deserves this last cone” of ice cream. He recalled driving to the top floor of the RTD Park-N-Ride and becoming scared when police started pointing guns at his dad. He stated he climbed into the front seat and ducked so police wouldn’t think he was his dad. L.C. recalled his father saying he was wanted by police and he had killed someone but did not say who he had killed. L.C. said the reason they had driven to the top of the RTD Park-N-Ride because his father said he would jump when police came. L.C. heard A.G tell his father before he left the vehicle to surrender, not to die, and not to jump. L.C. heard his father yell to police to shoot him or he would jump. L.C. said he did not see if his father jumped.

6-year-old J.G was interviewed at Blue Sky Bridge the evening of November 1, 2019. His father had told him his mother was sick. He had only seen her from the doorway of the bedroom, sleeping. He had no recollection of anything that occurred on the rooftop.

One other witness who had been riding the RTD bus described seeing some of what occurred on the rooftop from where he was standing further away at the northwest corner of Table Mesa and the exit from Foothills Parkway. He saw a man on the rooftop standing next to a car and then walking to the railing, climbing on the railing as if to sit on it, and after he heard one gunshot he saw the man fall over the railing facing forward.

Body Worn Camera and Drone Video:

Several police officers on scene had Body Worn Cameras in operation at the time of the incident. However, SWAT team members do not have operational Body Worn Cameras as part of their tactical gear. Much of the interaction described in this letter was captured on video

and/or audio from the Body Worn Cameras. However, a review of all recorded Body Worn Camera footage showed that none of the footage captured the images of Jose Gallegos at the exact moment the shot was fired because officers were moving towards Mr. Gallegos as he ran towards the vehicle and wall.

Officer Waylon Lolotai, who was negotiating with Jose Gallegos on the rooftop, captured a partial image of Jose Gallegos as he fell to his death. However, because Officer Lolotai was running towards him trying to stop him, there is no clear image of him going up and over the railing. The Critical Incident Team investigators slowed the video footage down to 15% speed in an effort to make it easier to observe what occurred, but it is still blurry because of the movement of the camera. Jose Gallegos can be seen possibly climbing over the railing then falling. He can be seen hitting the balconies below on the fall down, accounting for some of the additional blunt force trauma injuries observed at autopsy.

The audio of Officer Lolotai's Body Worn Camera captures several of the statements Jose Gallegos made on the RTD rooftop as reported by the witnesses. The sound is distant and quiet from Officer Lolotai's location, but audible at times. Soon after Officer Lolotai reaches the RTD rooftop and initiates verbal contact with Jose Gallegos, Jose Gallegos can be heard saying three times in succession that he has a gun. Jose Gallegos can be heard making comments for police to shoot him or he will jump. He confirms that his kids are in his car, and that they are safe. There are several exchanges between Officer Lolotai and Jose Gallegos where Gallegos says to shoot him and get it over with and Officer Lolotai tells Gallegos he will not just shoot him. Jose Gallegos references having said his good-byes to his kids, going to jail, being a monster, having taken someone's life, having killed someone, that person being dead for four days, having killed his kids' mother, and being dead already himself.

Towards the end of Officer Lolotai's audio and video Body Worn Camera, Officer Lolotai can be seen running towards Jose Gallegos and heard yelling "stop" to prevent Jose Gallegos from going towards the vehicle and ultimately over the rooftop railing. A single gunshot is audible as Officer Lolotai is running. A blurry image can be seen going over the edge of the railing. Finally, officers can be seen taking the children out of Jose Gallegos' vehicle to safety.

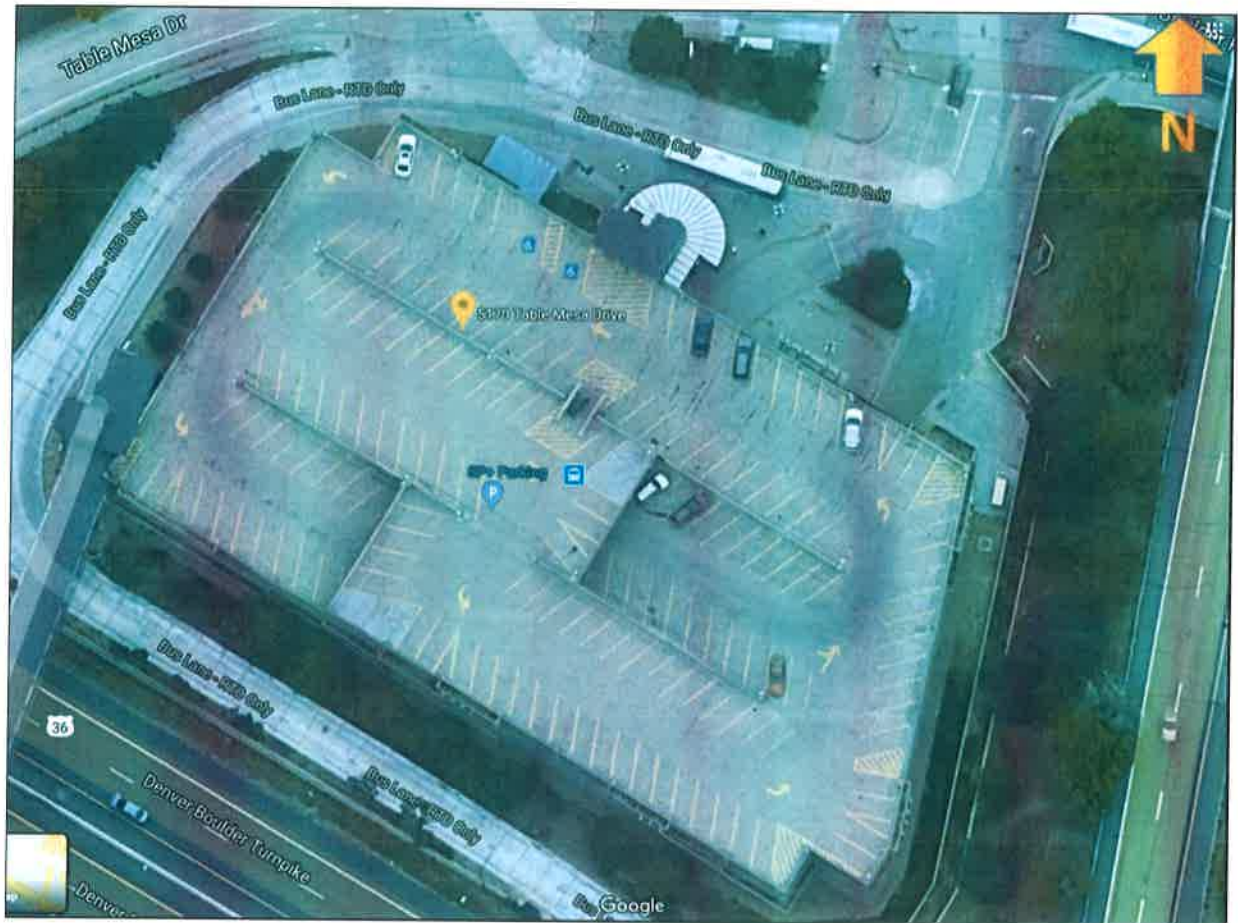
Drone video of the 4th floor rooftop captured footage of Jose Gallegos prior to the gunshot and prior to the fall. He is seen standing with his hands in the pockets of his hooded sweatshirt, and then moving towards his vehicle just before the shot was fired. The drone remained stationary and did not capture his image at the time of the shot or as he fell from the rooftop because Gallegos had run out of the sight picture.

In summary, the totality of the video footage related to the incident was consistent with the witness statements. The relevant portions of the video footage as provided to the District Attorney's Office by the Critical Incident Team in its presentation can be viewed on the District Attorney Critical Incident Team website.

Body Worn Camera from the scene of the homicide and from the ground after Mr. Gallegos jumped is not being released to the public due to the images contained therein.

Crime Scene Analysis and Reconstruction:

After the scene on the RTD rooftop was cleared, crime scene investigators processed the scene. An overview image provided by the Critical Incident Team investigators shows the layout of the rooftop, including the elevated position of the 5th floor on the rooftop where Sergeant DeLaria's sniper team had been located on the northeast corner, and the corresponding 4th floor rooftop area where Jose Gallegos and his vehicle were previously located to the northeast:



Sergeant DeLaria's rifle and gear were left at the location from which he fired the shot, and were photographed:

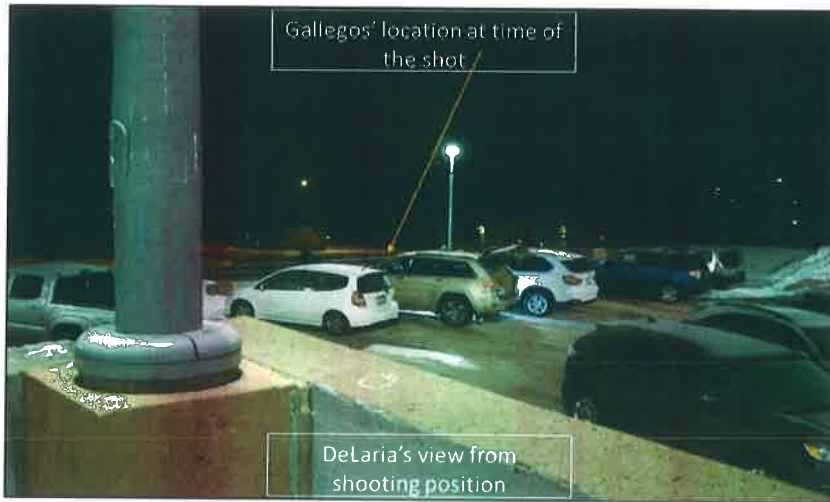


A single .308 shell casing was located to the right of his position, consistent with the single shot reported to have been fired from his sniper rifle:

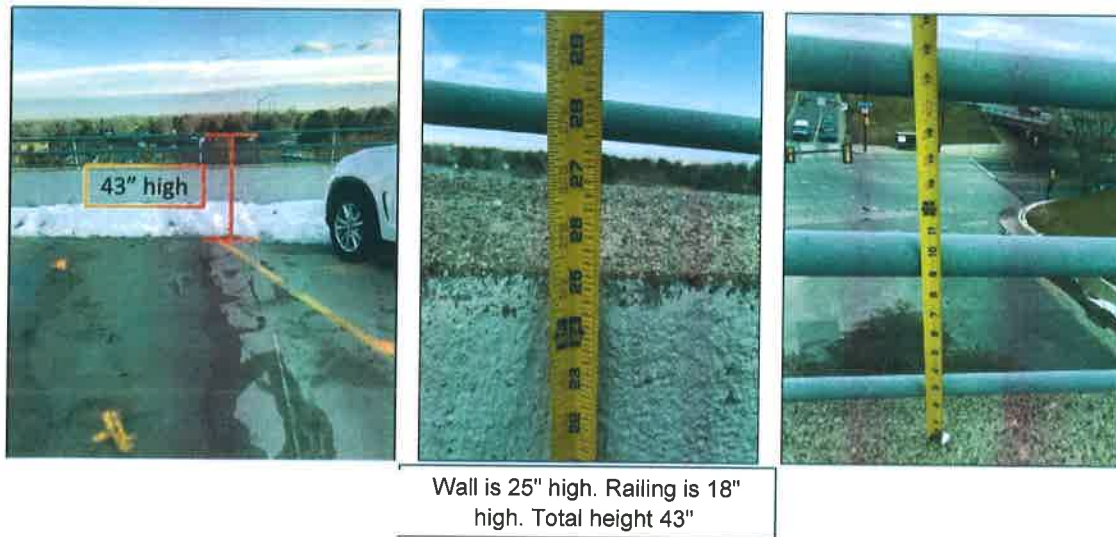


The bullet was fragmented upon impact as observed at autopsy, and no additional bullet fragments were located on scene. Investigators checked the nearby vehicles and surface areas for defects consistent with impact from a bullet and located none.

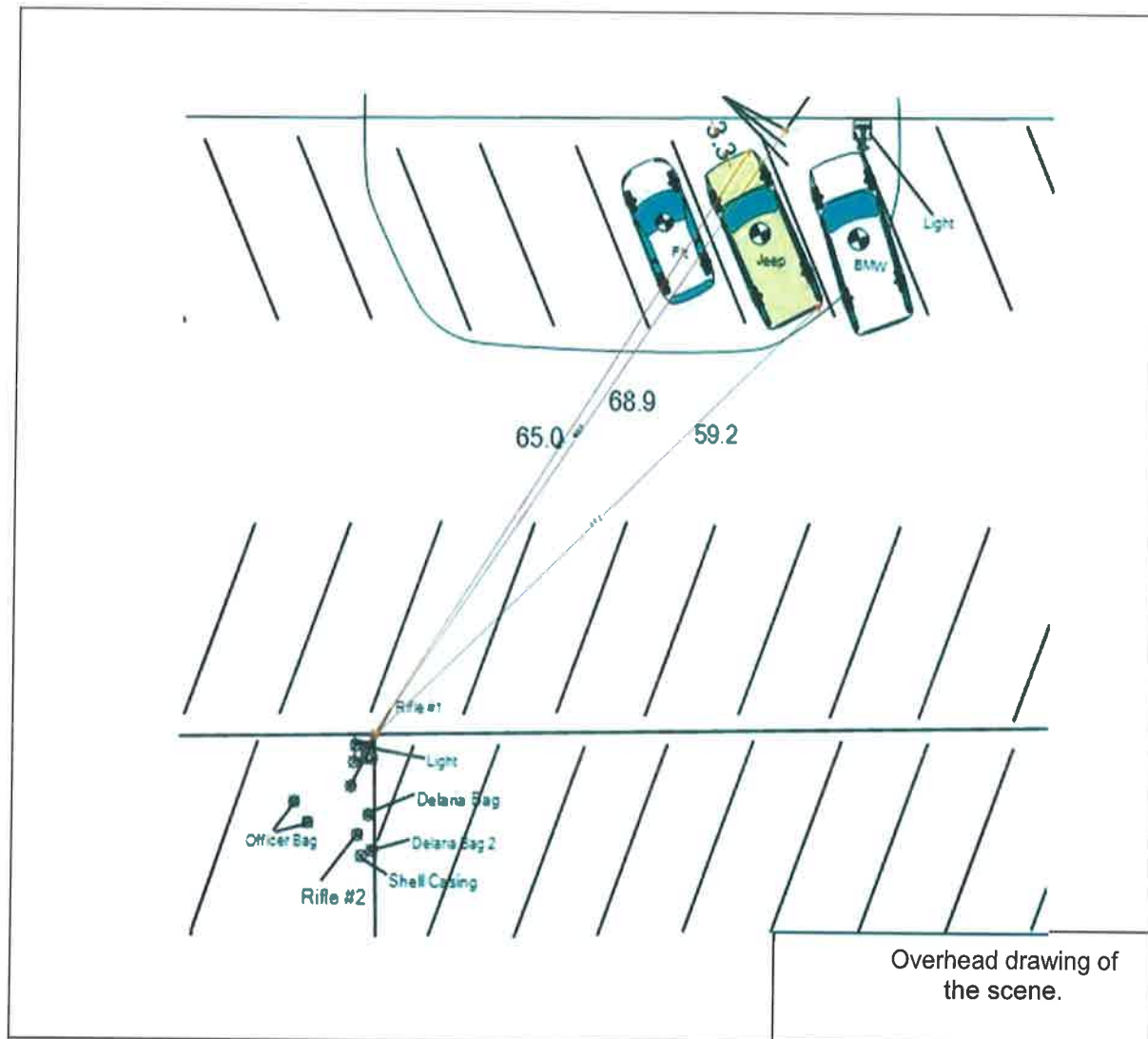
Jose Gallegos' Gold Jeep Grand Cherokee remained in the position it was in when he ran towards his vehicle, and was photographed from Sergeant DeLaria's vantage point:



Members of the critical incident team photographed and measured the various locations seen in the footage, referenced by the witnesses, and documented during the collection of evidence. This included the concrete wall and railing over which Jose Gallegos fell, which measured in total at 43 inches high:



The following diagram provided by the Critical Incident Team investigators shows the positioning of Jose Gallegos, his vehicle, Sergeant DeLaria, and the other vehicles on the rooftop of the RTD parking structure:



In conclusion, the scene evidence was consistent with a single .308 round being fired from an elevated position across an approximately 65ft distance in a northeast direction towards the front of the Gold Jeep Grand Cherokee near the railing of the rooftop. Based on the limited lines of sight from Sgt. DeLaria's position, Jose Gallegos would have been very close to the doors of his vehicle at the time the shot was fired. Further, with added concerns about the backdrop and Jose Gallegos taking cover from snipers' lines of sight, there would have been a very limited opportunity to fire a shot that would prevent him from getting into the vehicle or posing a greater threat if he was armed.

Based on the 43in height of the railing and Jose Gallegos height of 5ft 8in as measured at autopsy, it would have been very unlikely for him to have fallen over the railing without having climbed up onto it.

Autopsy Findings:

On November 3, 2019, Board Certified Forensic Pathologist Dr. Meredith Frank performed autopsies on both Jose Gallegos and Martha Sianez-Hernandez.

The autopsy for Jose Gallegos concluded that he died of blunt force injuries from the fall off the 4th level of the RTD parking structure. Numerous injuries were noted to the head, neck, and trunk areas which were fatal. Gallegos had one superficial bullet wound which penetrated the skin and superficial soft tissues of the medial left thigh. There were associated projectile fragment injuries (shrapnel) to the medial right thigh, scrotum, and proximal medial right leg. The entry and exit wounds showed a trajectory of back to front at a slightly downward angle. Dr. Frank explained the results of the autopsy at the critical incident team presentation. Her opinion from her examination was that the gunshot wound did not contribute to his death, and given the superficial nature of the injury, would neither have been fatal nor would it have caused him to fall over the railing to his death.

Dr. Frank's ultimate opinion was that Jose Gallegos died as the result of multiple blunt force injuries, and the manner of death was suicide.

The autopsy for Martha Sianez-Hernandez revealed that she had not died of a gunshot wound. Rather, her death was caused by blunt force injuries with sharp force features (chop injuries). Dr. Frank noted several closely-approximated full-thickness chop wounds of the left side of the head involving the left side of the face, left ear, and left frontotemporal and occipital scalp, which range from 5-1/2 inches to 10-1/2 inches in length. At least four separate wound paths were identified. Dr. Frank further noted that the maximal depth is approximately 3-1/4 inches, and that the depth of the wounds showed crush effect of the soft tissues and comminution of the skull.

A machete, consistent with the type of instrument that caused the wounds, was located in the home. Based on the totality of the investigation and the admissions made by Jose Gallegos during rooftop negotiations, she had been deceased for approximately four days and left face down to her side in the bed in her room partially covered by sheets and her hair so that her wounds weren't apparent without close inspection.

Dr. Frank's ultimate opinion was that Martha Sianez-Hernandez died as the result of blunt force injuries with sharp force features (chop injuries) of the head, and the manner of death was homicide.

LEGAL AUTHORITY

Criminal liability is established in Colorado only if it can be proven beyond a reasonable doubt that an individual committed all of the elements of a criminal offense defined by Colorado statute, and it is proved beyond a reasonable doubt that the offense was committed without any statutorily-recognized justification or excuse. While knowingly or intentionally shooting another human being is, generally, prohibited by statute as an assault or attempted homicide in Colorado, the Criminal Code specifies certain circumstances in which the use of physical force is justified. One of these specific circumstances is the use of physical force by a peace officer. The evidence establishes that one round from Officer DeLaria's rifle struck Jose Gallegos in the inner left

thigh area. Officer DeLaria indicated that he intentionally fired his weapon at Jose Gallegos in fear that Mr. Gallegos might hurt his children who were in his vehicle, himself, or his fellow officers with a handgun they believed was in his possession. The determination of whether Officer DeLaria's conduct was criminal is, therefore, primarily a question of legal justification.

The legal framework for the analysis in this case is found in the following sections of the Colorado Revised Statutes:

C.R.S. § 18-1-407 Affirmative defense

- (1) "Affirmative defense" means that unless the state's evidence raises the issue involving the alleged defense, the defendant, to raise the issue, shall present some credible evidence on that issue.
- (2) If the issue involved in an affirmative defense is raised, then the guilt of the defendant must be established beyond a reasonable doubt as to that issue as well as all other elements of the offense.

C.R.S. § 18-1-710 Affirmative defense

The issues of justification or exemption from criminal liability under sections 18-1-701 to 18-1-709 are affirmative defenses.

C.R.S. § 18-1-704 Use of physical force in defense of a person

- (1) Except as provided in subsections (2) and (3) of this section, a person is justified in using physical force upon another person in order to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force by that other person, and he may use a degree of force which he reasonably believes to be necessary for that purpose.
- (2) Deadly physical force may be used only if a person reasonably believes a lesser degree of force is inadequate and:
 - (a) The actor has a reasonable ground to believe, and does believe, that he or another person is in imminent danger of being killed or receiving great bodily injury.

C.R.S. § 18-1-707 Use of physical force in making an arrest or in preventing an escape

- (1) Except as provided in subsection (2) of this section, a peace officer is justified in using reasonable and appropriate physical force upon another person when and to the extent that he reasonably believes it necessary:
 - (a) To effect an arrest or to prevent the escape from custody of an arrested person unless he knows that the arrest is unauthorized, or

(b) To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect such an arrest or while preventing or attempting to prevent such an escape.

(2) A peace officer is justified in using deadly physical force upon another person for a purpose specified in subsection (1) of this section only when he reasonably believes that it is necessary:

(a) To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or

(b) To effect an arrest, or to prevent the escape from custody, of a person whom he reasonably believes:

- (I) Has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon; or
- (II) Is attempting to escape by the use of a deadly weapon; or
- (III) Otherwise indicates, except through a motor vehicle violation, that he is likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay

C.R.S. § 18-1-901 Definitions

(3)(d) "Deadly physical force" means force, the intended, natural, and probable consequence of which is to produce death, and which does, in fact, produce death.

In cases of self-defense or defense of another, individuals are entitled to rely on the doctrine of "apparent necessity" so long as the conditions and circumstances are such that a person would reasonably believe, erroneously or not, that action was necessary. See, People v. La Voie, 155 Colo. 551, 395 P.2d 1001 (1964), People v. Silva, 987 P.2d 909 (Colo. App. 1999). It is immaterial whether the suspect was actually trying to injure the officers or another, so long as a reasonable person, under like conditions and circumstances, would believe the appearances were sufficient to require the action taken. People v. Silva, 987 P.2d 909 (Colo. App. 1999). It has long been held by the Colorado Supreme Court that:

It is fundamental that the law of self-defense, which is emphatically a law of necessity, involves the question of one's right to act upon appearances, even though such appearances may prove to have been deceptive; also the question of whether the danger is actual or only apparent, and as well the fact that danger is not necessary, in order to justify one in acting in self-defense. Apparent necessity, if well-grounded and of such a character as to appeal to a reasonable person, under like conditions and circumstances, as being sufficient to require action, justifies the application of the doctrine of self-defense to the same extent as actual or real necessity. Young v. People, 107 P. 274 (Colo. 1910).

Therefore, pursuant to C.R.S. 18-1-704 and 18-1-707(1)(b) and (2)(a), the issue is whether at the time Sergeant DeLaria used physical force, he reasonably believed that Jose Gallegos' children or police officers on scene were being subjected to, or were about to be subjected to, the imminent use of unlawful physical force while attempting to effect an arrest or prevent an escape; and furthermore, that his actions in defending against that force were objectively reasonable. Alternatively phrased, would a reasonable officer, confronted with the same facts and circumstances, have concluded that it was necessary to use physical force to defend himself or another, and stop the threat that Jose Gallegos presented when he ran towards his vehicle with the children inside after admitting he had murdered Martha Sianez-Hernandez while likely armed with a handgun.

Further, pursuant to C.R.S. 18-1-707(1)(a) and (2)(b), the issue is whether at the time Sergeant DeLaria used physical force, he reasonably believed that force was necessary to effect an arrest, and if he used deadly force, whether that arrest was for a felony involving the use of a deadly weapon or for a suspect who is likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay.

Finally, to determine whether Sergeant DeLaria was justified in firing the single shot from his sniper rifle, it must be determined whether such force meets the legal definition for "deadly force."

LEGAL ANALYSIS

Sergeant DeLaria had knowledge of facts establishing that Jose Gallegos had committed murder, a felony offense. Therefore, Officer Gallegos was legally justified in using physical force so long as use of physical force was reasonably necessary to effect the arrest of Jose Gallegos. In examining the reasonableness of the use of physical force, the law requires that I consider the totality of the circumstances.

As a threshold matter, the force used by Sergeant DeLaria when firing a single round from his .308 caliber rifle at Jose Gallegos does not meet the legal definition of "deadly force" because it did not "in fact, produce death," or in other words, cause the death of Jose Gallegos. The evidence here supports the conclusion that Jose Gallegos caused his own death by jumping from the 4th floor rooftop of the RTD Park-N-Ride structure.

This conclusion is supported by the fact that he announced his intention to jump to his death to numerous people, he was seen running for the ledge and going over himself by witnesses, the height of the ledge would have required him to purposely climb over it, the fatal injuries were caused by the fall, the gunshot wound was superficial and determined not to be a contributing factor by the forensic pathologist, the superficial wound was not one that would have propelled him over the ledge, and he would have survived the gunshot injury had he not jumped to his death.

Based on the totality of the evidence in the case, Sergeant DeLaria did not cause the death of Jose Gallegos; Jose Gallegos committed suicide.

Furthermore, in this case, the actions of Sergeant DeLaria were legally justified under Colorado law. At the time Sergeant DeLaria discharged his rifle, he was justified in using physical force pursuant to C.R.S. section 18-1-707(1)(a). This subsection provides that an officer may use physical force where he or she reasonably believes that it is necessary to effect the arrest of a person. At the time Sergeant DeLaria discharged his rifle, he was aware police officers had reason to effect the felony arrest of Jose Gallegos for the murder of Marta Sianez-Hernandez.

Additionally, pursuant to C.R.S. 18-1-704(1) and 18-1-707(1)(b), Sergeant DeLaria was justified in using physical force in defense of the children in the vehicle and in defense of himself and fellow officers.

Specifically, there were a series of dangerous acts and efforts to prevent the arrest by Jose Gallegos before Officer DeLaria used physical force by discharging his rifle. These acts included failure to follow commands of SWAT officers, keeping his hands in his pockets despite commands to remove them, failing to surrender or move away from his vehicle, and running towards his vehicle. At the time Jose Gallegos ran towards his vehicle, Sergeant DeLaria had knowledge that Jose Gallegos was a homicide suspect, reasonably believed he had shot his wife and was possibly armed with a gun, and had information that he had his young children in the vehicle. Further, he knew an armed hostage situation would pose an imminent risk of death to those children, to himself, and to fellow officers. Sergeant DeLaria was justified in using physical force by firing a single round from his .308 caliber sniper rifle to prevent what he reasonably believed to be the imminent use of force by Jose Gallegos.

Finally, although the force used in this case does not meet the legal definition of "deadly force" because it did not result in the death of Jose Gallegos, pursuant to C.R.S. 18-1-704(2)(a) and 18-1-707(2)(a) under a "deadly force" analysis Sergeant DeLaria would have been legally justified to use deadly force given his reasonable belief that it was necessary to defend officers and Jose Gallegos' children from the imminent use of deadly physical force.

Similarly, given Sergeant DeLaria's reasonable belief that Jose Gallegos had used a firearm in the commission of a homicide, and Jose Gallegos' threatening actions as described above, deadly force would have been legally justified to effect an arrest without delay pursuant to C.R.S. 18-1-707(2)(b)(I) and prevent his actions which appeared likely to endanger the lives of officers and his children pursuant to C.R.S. 18-1-707(2)(b)(III).

Specifically, Sergeant DeLaria had a reasonable belief that Jose Gallegos could be armed with a handgun, that Jose Gallegos' 6 year old and 12 year old children were in his vehicle, that he had driven that vehicle up to the railing of a multi-story rooftop, that officers had reason to believe that he had murdered his wife with a handgun and was he wanted in conjunction with that homicide, that Sergeant DeLaria heard him say he had killed someone's mother, that Jose Gallegos refused to comply with orders to remove his right hand from his sweatshirt pocket, and that he made a sudden and unexpected sprint in the direction of the vehicle with the children immediately prior to the shot being fired, Sergeant DeLaria would have been justified in using deadly force.

CONCLUSION

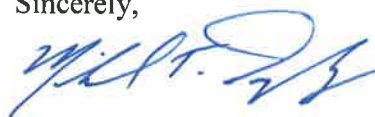
We find in our review of this shooting that no conduct by Officer DeLaria rises to the level of a criminal offense. It is the conclusion of my office that, based on the applicable law and the facts and circumstances of this case, that law enforcement's actions during this incident meet the legal requirements of the affirmative defense of self-defense and defense of others as contained in C.R.S. 18-1-704(1). The officers' actions also meet the legal requirements of C.R.S. 18-1-707(1)(a) and (b) involving the use of physical force in defense of oneself or others, and in making an arrest or preventing an escape.

Finally, although the force used in this case does not meet the legal definition of deadly force because the gun shot did not cause or contribute to the death of Jose Gallegos, it should be noted that under the circumstances Sergeant DeLaria would have been justified in using deadly force pursuant to C.R.S. 18-1-704(2) and C.R.S. 18-1-707(2)(a) in self-defense and defense of others, and pursuant to C.R.S. 18-1-707(2)(b) to effect an arrest of a suspect who he believed to have committed a felony using a deadly weapon and who was likely to endanger human life of his two young children unless apprehended without delay.

Therefore, based upon the entire investigation of this incident, it is the final conclusion of my office that the legal requirements of the affirmative defense(s) were satisfied by law enforcement actions, that law enforcement was legally justified in the use of physical force in this case and, therefore, that their conduct does not violate any criminal statutes. Accordingly, pursuant to C.R.S. 18-1-704(1) and (2), 18-1-707(1)(a), (1)(b), (2)(a), and (2)(b), and applicable case law, I find that Sergeant DeLaria was legally justified in using physical force against Jose Gallegos under the circumstances. As a result, my office will not be filing criminal charges against Officer DeLaria.

The Colorado University Police Department is the custodian of records related to this case. Any records inquiries will be directed to the Colorado University Police Department.

Sincerely,



Michael Dougherty
District Attorney
20th Judicial District